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Supreme Court, U.S.
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CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

Peter E. Hendrickson, Petitioner

v.

United States, Respondent

On Petition for Writ of Certiorari to the United States Court Of Appeals for the Sixth Circuit

Petition for Writ of Certiorari

Petitioner Peter E. Hendrickson
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Proceeding Pro Se

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QUESTIONS FOR REVIEW

1. Whether the Court of Appeals erred in holding that the language of the 1954 Internal Revenue Code constitutes an entire, substantive replacement of all United States internal revenue law enacted prior to August 16, 1954 (and particularly as regards the summons authority), and is now the free-standing, independently enacted, whole body of federal internal revenue law, general and permanent in nature;

2. If not, does the language of section 7602 of the 1954 IRC concerning IRS (or Treasury Department) summonses and examinations actually authorize searches through the papers, effects and records of, or about, any person whatsoever, without distinction of context, the person's relationship to the federal government (or lack thereof), whether a waiver of Fourth Amendment protection has or has not been made, the existence of evidentiary cause of any kind (or lack thereof), and in the face of unchallenged sworn evidence that, in fact, no cause exists, and that the target of the summons is not within the scope of its lawful authority.

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OPINION BELOW

The Sixth Circuit issued its opinion as "not recommended for publication", and the case manager is able to provide only the following designation for the case: 20070410 06-1870. The opinion is attached.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Article III of the Constitution of the United States of America as the Court of appellate jurisdiction of all controversies to which the United States is a party. Judgment for review was entered by the Sixth Circuit Court of Appeals on April 10, 2007, and Petition for En Banc Rehearing was denied on August 8, 2007

PROVISIONS OF LAW INVOLVED IN THIS CASE

The Fourth Article of Amendment to the U.S. Constitution; Sections 3163 and 3173 of the Revised Statutes; Section 1115 of the Revenue Act of 1926; Sections 3614, 3615, 3632 and 3654 of the Internal Revenue Code of 1939; and 26 USC 7602.

STATEMENT OF THE CASE

This case involves fundamental issues about the accurate scope and application of IRS summons authority never before litigated, yet critical to the proper deployment of that frequently-invoked, high-potential-for-abuse authority, and is of profound interest to the American people as a whole. The ruling of the Court below regarding those issues is in direct conflict with repeated rulings by this Court and at least the Fourth Circuit Court of Appeals, and rests on a misrepresentation in appellate proceedings of a single completely inapposite-- indeed, contrary--

ruling in a DC Circuit case, cited but never quoted. Nonetheless, the ruling below is already being used by the IRS in representations to other courts in similar cases. Thus, this matter is of immediate and significant importance.

> *"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)..."* Donaldson v. United States, 400 U.S. 517 (1971);
>
> *Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code.* " United States v. LaSalle National Bank, 437 U.S. 298 (1978) (referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954)).
>
> *"...absent [substantive] comment it is generally held that a change during codification is not intended to alter the statute's scope. See Muniz v. Hoffman, 422 U.S. 454, 467-474 (1975)."* Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985);
>
> *As we said in United States v. Ryder, 110 U.S. 729, 740 (1884): "It will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." (Citations omitted).* Fulman v. United States, 434 U.S. 528 (1978);
>
> *"The internal revenue title, which comprises all of the Code except the preliminary sections relating to its enactment, is intended to contain all the United*

States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes the occasion of which may arise after the enactment of the Code. ***These statutes are codified without substantive change*** *and with only such change of form as is required by arrangement and consolidation. The title contains no provision, except for effective date, not derived from a law approved prior to January 3, 1939.* Preface to the Internal Revenue Code of 1939 (Emphasis added)

"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda v. Arizona, 384 U.S. 436 (1966)

The Internal Revenue Service (IRS) has issued a summons in an effort to conduct a search concerning Petitioner (hereinafter referred to in the first person), citing no cause, no connection between me and the federal government, and no waiver or other mechanism by which the statutory and/or Constitutional limits of the summons authority have been rendered moot in regard to me. The summons was issued in the face of timely and proper sworn tax returns establishing-- without reliance on deductions-- that I owe no outstanding obligation to the Respondent (hereinafter: IRS) or its client, which return affidavits stand entirely unchallenged throughout the proceedings in this case.

I responded to the summons with a timely petition to quash under the provisions represented at 26 USC 7609 and invoking the jurisdiction of the

District Court as specified at 7609(h), citing the provisions of law explicitly specified in multiple rulings of this Honorable Court as being those in which the IRS summons authority resides, and furnishing the District Court with evidence (unchallenged to this day) that I am not among those about whom such summonses may issue, per the plain language of those provisions. The District Court issued a ruling against my petition without any appearance or filing by the IRS, without proceedings of any kind, and without explanation.

I appealed to the Sixth Circuit Court, again citing the language of the applicable law. After being fully briefed, the Sixth Circuit panel has adopted the entirely unsupported argument of the IRS that the body of law explicitly specified by this Honorable Court as being the relevant authority in this matter really is not, in fact, the relevant authority. Instead (per IRS and the Circuit Court), the language of the 1954 Internal Revenue Code constitutes an entire, substantive replacement of all preceding United States internal revenue law, and particularly as regards the summons authority. This despite repeated rulings by this Honorable Court decades AFTER the adoption of the 1954 code explicitly declaring the contrary, particularly as regards the summons authority; and despite a vast amount of additional unambiguous authority to the contrary clearly presented in my filings. Thus, the question: Did the Appellate Court err in declaring that the 1954 Internal Revenue Code (IRC) constitutes a flat-out repeal or otherwise substantive replacement of all (or relevant) federal tax-related statutes?

Having concluded that the 1954 IRC is now free-standing law, general and permanent in nature,

the Sixth Circuit proceeded to adopt the IRS's dependent argument that the unqualified phrase "any person", and other infinitely broad language found in the text of IRC 7602, should (or can) be read literally. Thus, the Appellate Court declares the IRS free to conduct a search concerning literally *any person*; that its mere curiosity legitimizes its investigation; and (apparently) that its hope to find "relevant materials" in the course of such a poking about makes the materials it hopes to find relevant. (No effort has been made either by the Appellate Court or the IRS to meaningfully address that part of this Court's "Powell" doctrine concerning certification that the "information" the IRS hopes to discover the existence of is not already in its possession. The agent issuing the summons declares this to be so, but since he has no evidence to suggest that there IS anything to be looking for, his certification is an empty tautology, meant to be glazed-over in the mind of the reader by the muddled notion that the records in which he hopes to discover such "information" are themselves the "information not already in his possession" referred to by this Court in Powell...)

REASONS THIS PETITION SHOULD BE GRANTED

1. The Ruling Of The Court Below Works To Undermine The Express Will Of Congress

As this Court has pointed out over the centuries, expressing what is certainly one of the most fundamental of American judicial doctrines,

"When the words of a statute are unambiguous, the first canon of statutory construction--that Courts must presume that a legislature says in a statute what it means and means in a statute what it says there--is also the last, and judicial inquiry is complete." Connecticut National Bank v. Germain, 503 U.S. 249 (1992).

The Preliminary Materials section of the current IRC reveals that the language of section 7602 contained therein which is invoked as the authority for the summons in question is a re-codification of section 3614, section 3615 (a), (b) and (c), and section 3632(a)(1) of the Internal Revenue Code of 1939. This representation of the underlying statutory authority took its present form in 1954, but was unchanged in meaning, as is noted by this Court in United States v. LaSalle National Bank, 437 U.S. 298 (1978):

"Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code.", referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954).

[Note: The court's reference to section 3654 of the 1939 Code is now out-of-date with the Code's current derivation table, which, as observed above, refers to 3614, 3615 and 3632 (concerning authority to administer oaths, certify certain papers and hear testimony in certain cases). However, 3654, now omitted, simply reflected the authority given to collectors to supervise, summon and examine "all officers of internal revenue" and their books, records, etc. in section

3163 of the Revised Statutes. This same authority is now reflected in 26 USC 7602(b), per the Tax Reform Act of 1982.]

Table A of the Appendix to the 1939 code- "Derivation of Internal Revenue Code" reveals, in turn, the statutes-at-large which these code sections reflect, and which remain the current law of the land.

The content of these statutes can be separated into three categories:

1. Providing appropriate parties with the authority to administer oaths to witnesses and take testimony;
2. Specifications as to the classes of persons in regard to whom summonses and examinations can be undertaken; and
3. Specifications as to the purposes for which such summonses and examinations can be initiated.

As Congress has, in fact, specified the classes of persons in regard to whom summonses may issue, the first consideration of the legitimacy of any summons is whether the person in regard to whom it is issued is within those classes (and whether the scope of those classes conforms to the Constitution, of course). Only if this is established as being the case does the question then turn to whether the summons has been issued for an authorized purpose, and other considerations by which Congress and the courts have further qualified the exercise of this authority (including this Court in its ruling in United States v. Powell, 379 U.S. 48 (1964), a case in which the issue of whether Powell was within the classes specified in the statutory summons authority was never raised).

The pertinent words of the statute specifying the classes in regard to whom summonses may issue

(Section 3173 of the Revised Statutes, as amended in 1919 and re-enacted as the current law in the Revenue Act of 1926) could not be more clear--anyone can understand them without difficulty:

> "... *And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person...*";

The draftsmen of the 1939 IRC, in representing this specification, did so with refreshing clarity:

> *"SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.*
>
> *(a) GENERAL AUTHORITY.—It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. ...*
>
> *(b) ACTS CREATING LIABILITY.—Such summons may be issued—*
>
> *(1) REFUSAL OR NEGLECT TO COMPLY WITH NOTICE REQUIRING RETURN.—If any person, on being notified or required as provided*

in section 3611, shall refuse or neglect to render such list or return within the time required, or

(2) FAILURE TO RENDER RETURN ON TIME.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

(3) ERRONEOUS, FALSE, OR FRAUDULENT RETURN.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

(4) REFUSAL TO PERMIT EXAMINATION OF BOOKS.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books."

Clearly, summonses can only issue in regard to those who have refused or neglected to render a timely list or return upon receiving notification of a requirement to do so, or those required to deliver a monthly or other return of objects subject to tax-- who are, as a class, involved in a particular relationship with the federal government such as to make them properly subject to this sort of arbitrary investigation. Clearly, the summons authority cannot be invoked to authorize a general search, without existing and evidenced cause, simply to "ascertain the correctness" of a tax return that any American has been obliged or induced to file by the workings of some other statutory provision or structure.

Senator Danaher: "*Of course, you withhold not only from taxpayers but nontaxpayers.*"

Mr. Hardy: "*Yes.*"

...

Senator Danaher: "*I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?*"

Mr. Friedman: "*You're thinking of a corporation or an individual?*"

Senator Danaher: "*I am talking about an individual.*"

Mr. Friedman: "*An individual will file an income tax return, and that income tax return will constitute an automatic claim for refund.*"

(From the hearing on withholding provisions of 1942 Revenue Act before the subcommittee of Committee on Finance, US Senate, during the 77th Congress, Second Session, August 21, 22, 1942. Connecticut Senator John A. Danaher and testifying witnesses Charles O. Hardy, Brookings Institution, and Milton Friedman, Treasury Department Division of Tax Research.)

Even more clearly, the power to summon and search cannot be properly deployed simply in order to determine whether a return should have been made by any person. Were it otherwise, the authority would be in plain conflict with the Fourth Amendment:

> "*Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them.*" Miranda v. Arizona, 384 U.S. 436 (1966);

and with many other statutory elements of the tax structure, as will be discussed below.

Finally, it is self-evident that the scope of the summons authority involved here can only concern

itself with books and records explicitly related to "income" (that is, books and records concerning activities taxable by Congress). Whether any given books and records qualify in this regard can only be based on pre-existing evidence of the related conduct of such taxable activity. Those required to deliver a monthly or other return of objects subject to tax are inherently engaged in taxable conduct, and evidence of such conduct (e.g. by way of "information returns") is a preliminary element to being "notified or required" to file a return in other cases (making these the "persons who may be liable for taxes" referred to by this Court in United States v. Bisceglia, 420 U.S. 141 (1975) when discussing those with whom the summons authority is concerned). In the absence of such qualifying elements, any summons and search would be in bad faith on its face.

2. Not A Single Authority Supports The Lower Court's Conclusion That §7602 Of The 1954 IRC Is Itself, Or Accurately Reflects, The Summons Statute

That the unambiguous words of section 3173 of the Revised Statutes express the ongoing will of Congress could not be more clear. These words have been the law for more than 130 years, re-enacted over and over again in various subsequent revenue acts.

Unable to evade the clear meaning of these words, the IRS has argued that they no longer exist, which argument the Appellate Court ultimately adopted. In a nutshell, this argument proposes that the condensed summary of the statutes presented in the current "code"-- in which certain specifications in those statutes are, for the sake of the brevity and

simplification which is the chief purpose of the codification effort, omitted-- is now itself the actual law. The IRS thus proposes that the "any person" used in the language of section 7602 of the code:

> *(a) Authority to summon, etc.*
> *For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—*

(by which is actually meant *"any person within the scope of this authority as specified by the underlying statutes"*) means literally *any person*, and that the IRS thus has an effectively unlimited power to poke through the papers and effects of whomever it chooses, even where no relationship between the target and the government exists, nor any evidenced cause.

Unable to muster a shred of actual authority to support its false contention, the IRS resorted to a carefully opaque reference to a D.C. Circuit Court case in its appellate brief, in such a manner as to imply that the D.C. Circuit Court had issued a ruling in support of its contention about the law. The Sixth Circuit Court explicitly relies upon this unquoted case citation as the grounds for its adoption of the argument concerning the supremacy of the vague and limitless language of 7602 and its ruling in the instant case. However, this D.C. Circuit case-- the very best the IRS could come up with to stand against the straightforward words of the law I have presented in this matter-- is entirely inapposite, and even goes so

far as to contradict the IRS's contentions, when actually read.

The case-- never actually quoted by the IRS in its brief-- is Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000). The IRS's contention about the law was never an issue in this case-- it was neither litigated nor considered by the court. The only means by which this case can be distinguished in this respect from one chosen completely at random is a single sentence in a footnote declaring, without any support or explanation, that *"The IRC has been enacted as a separate code and is therefore positive law"*.

However, not only does the fact that the IRC "has been enacted as a separate code" NOT automatically mean that it is therefore "positive law" in the sense of being legal evidence of the laws general and permanent (as would appear to be being incorrectly taken for granted by the writer of this footnote), but the writer goes on to contradict his own casual assertion in the very next sentence: *"Though both the Statutes at Large and the IRC could be said could be said to be authoritative here..."*; and then makes clear that the subject is not being seriously considered in the case, in any event: *"The difference is irrelevant to the outcome of the case..."*

Again, this irrelevant, non-precedential case is the only thing the IRS could present in its effort to overcome the actual provisions of the law pertinent to the underlying issue in this case. This is because what I have pointed out about the law is simply correct, and the ruling by the Sixth Circuit to the contrary is simply in error.

3. ALL Relevant Authority Declares The Lower Court's Decision To Be In Error, Including Rulings By This Court And The Fourth Circuit

The decision of the Sixth Circuit Court in this case is plainly and squarely at odds with repeated explicit (and accurate) holdings by the this Court that the specifications concerning about whom a summons can issue under 26 USC 7602 ARE NOT "derived from", nor are to be measured against, the infinitely expansive language of section 7602 of the 1954 code but are those expressed in the IRC of 1939 and presented in detail in my petition and my briefs to the lower Court. This Court declares in Donaldson v. United States, 400 U.S. 517 (1971):

> *"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)...";*

again, and more forcefully, in United States v. LaSalle National Bank, 437 U.S. 298 (1978):

> *"The legislative history of the Code supports the conclusion that Congress intended to design a system with interrelated criminal and civil elements. Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code."*, referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954);

and, in a more general, but relevant, observation:

> *"...absent [substantive] comment it is generally held that a change during codification is not intended to alter the statute's scope. See Muniz v. Hoffman, 422 U.S. 454, 467-474 (1975)."* Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985).

That is, the language of 7602 is irrelevant-- **it is the language found in the 1939 code that accurately represents the relevant law.**

The IRS says this Court is simply wrong (as does the Court below). The IRS argues that the current version of the code (whether denominated as the 'IRC of 1986', '26 USC' or otherwise) is some kind of distinct, subordinate derivative of the 1954 code, and that the 1954 code is to be taken as the source of its authority. THIS IS SIMPLY NOT TRUE.

The language of 26 USC (and/or that of the IRC of 1986) cannot be (and is not) "derived from" the infinitely-expansive-language of section 7602 of the 1954 code, BECAUSE THEY ARE ONE AND THE SAME, and that language has always been nothing more than a distorted reflection of its actual underlying authority.

The current version of the code (however denominated) IS, and always has been, the IRC of 1954, which was simply "redesignated" as the "IRC of 1986" by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095:

> *ACT AUG. 16, 1954, CH. 736, 68A STAT. 3*
> *The following tables have been prepared as aids in comparing provisions of the Internal Revenue Code of 1954 (redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095) with provisions of the Internal Revenue Code of 1939.* (From the headnote of the "Preliminary Materials" section of 26 USC.)

Such "redesignation" made no change in the legal status of the code-- neither distinguishing the "current" nominal code from the 1954 version, nor

elevating the 1954 version in any fashion. As is stated at 26 USC 7701(a)(29):

> *(29) Internal Revenue Code*
> *The term "Internal Revenue Code of 1986" **means this title**, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.* (Emphasis added.)

Since the "Internal Revenue Code of 1986" is, in fact, nothing but the 'Internal Revenue Code of 1954" with a new name, this means that 26 USC itself IS the "Internal Revenue Code of 1954". The IRC of 1954 is not the "statute" from which language in 26 USC is derived or to which it is to be compared for its authority-- the two are one and the same.

Thus, when Congress explicitly declares 26 USC to NOT be enacted as "positive law", as in:

> *"Certain titles of the Code have been enacted into positive law, and pursuant to section 204 of title 1 of the Code, the text of those titles is legal evidence of the law contained in those titles. The other titles of the Code are prima facie evidence of the laws contained in those titles. The following titles of the Code have been enacted into positive law: 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 44, 46, and 49."* US House of Representatives Office of the Law Revision Counsel,

it is declaring the IRC of 1954 to NOT be enacted as "positive law". When Congress and this Court declare that titles not enacted as positive law are merely "prima facie" evidence of the law, and subordinate to underlying statute:

> *"By 1 U.S.C. 54(a), 1 U.S.C.A. 54(a) the Code establishes 'prima facie' the laws of the United*

> *States. But the very meaning of 'prima facie' is that the Code cannot prevail over the Statutes at Large when the two are inconsistent."* Stephan v. United States, 319 U.S. 423 (1943) (The section 1 USC 54(a) to which the court refers is now 1 USC 204(a)),

they are declaring the IRC of 1954 to be mere "prima facie" evidence of, and to be subordinate to, OTHER LANGUAGE-- that being the language of the underlying statutes-at-large, which remain the relevant law.

This is why the Joint Committee on Taxation's 1992 'DERIVATIONS OF CODE SECTIONS' report does not even mention the '1986' code. With the sole exception of the occasional post-1954 enactment, the 1986 version is entirely and inherently represented by the tables showing the derivation data FOR THE 1954 CODE (which explicitly show section 7602 as being derived from the 1939 code). The same plain fact is expressed in the current presentation of 26 USC, in the derivation tables of which the IRC of 1954 is not referenced at all. Instead, just as in the Joint Committee's report, the current code references its derivations-- particularly that of 7602-- as being directly from the 1939 code (which, in turn, shows its derivations from the Statutes at Large).

THE PLAIN, INCONTROVERTIBLE FACT IS THAT THE 1954 CODE LANGUAGE HAS ALWAYS BEEN, AND REMAINS TO THIS DAY, MERE PRIMA FACIE EVIDENCE OF UNDERLYING, FAR MORE RESTRICTIVE STATUTORY LANGUAGE TO WHICH THE DISTORTED EXPRESSIONS IN 7602 ARE SUBORDINATE.

The ruling of the Circuit Court, which embraces the IRS's inane, self-serving proposition that the language of the 1954 code section 7602 is to be taken as the law regarding the summons authority (since it otherwise would have acknowledged the limitations laid out in the actual law), is in error. That proposition is plainly wrong, and plainly in conflict with the Constitution, this Honorable Court and Congress on the subject.

It is also plainly ludicrous to suggest that Congress had embraced the restrictive summons protocol expressed in the 1939 code for more than 92 years, and then suddenly chucked it all and went feral in 1954. This Court agrees that this cannot be read into the language found in the IRC of 1954 regardless of the status of the code:

> *As we said in United States v. Ryder, 110 U.S. 729, 740 (1884): "It will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." (Citations omitted).* Fulman v. United States, 434 U.S. 528 (1978).)

Thus, even if the absurd notion that on August 16, 1954, Congress, in one fell swoop, enacted the 3.5 million words of 26 USC as "positive law" WERE true, it would make no difference to the limits of the real meaning of the language of 7602, in light of this Court's previously noted observations in US v. LaSalle, Donaldson v. US, and Walters v. Nat. Assn. of Radiation Survivors. As the Fourth Circuit recently put it even more plainly and forcefully in Washington-Dulles Transp., Ltd. v. Metropolitan Washington Airports Authority, 263 F.3d 371 4th Cir. (2001):

"[I]f there is a conflict between the original Congressional enactment contained in the Statutes at Large and a codification that has been enacted into positive law, the Statutes at Large control when (1) the meaning of the original enactment was "clear and quite different from the meaning . . . ascribe[d] to the codified law," and (2) "the revisers expressly stated that changes in language resulting from the codification were to have no substantive effect." Cass v. United States, 417 U.S. 72, 82 (1974); see Welden, 377 U.S. at 98 n.4; see also Finley v. United States, 490 U.S. 545, 554 (1989)"

4. If The Law Really DID Mean To Extend The Summons Authority As Ruled By The Lower Court, It Would Be Void Under The Fourth Amendment

This case concerns my petition to the federal courts to quash a plainly improper IRS summons, issued without any evidence of cause whatever. The sole "evidentiary" basis for this severe intrusion into my personal privacy consists of an empty "declaration" by an IRS Criminal Investigation Division agent.

The agent's "declaration" expresses nothing more of substance than that he wishes to conduct his search and seizure in order to ascertain whether or not I have complied with certain provisions of law. He makes no effort to substantiate-- or even plainly allege-- that I have not done so, or am even subject to these provisions.

Further, and even if the agent's declaration DID allege that I am subject to such provisions, **it is self-evident that a mere interest in investigating whether or not any person has complied with any law, in the absence of demonstrated cause, cannot serve as a lawfully sufficient pretext or justification for evading the provisions of the Fourth Amendment:**

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."* Fourth Article of Amendment to the Constitution of the United States of America

Precursors to the Amendment helpfully clarify its intent. For instance, the Virginia Declaration of Rights, expressed the same purpose in 1776 as follows:

> *"That general warrants, whereby any officer or messenger may be commanded to* ***search suspected places without evidence of a fact committed****, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted"* (emphasis added);

The Declaration of Rights in the Pennsylvania Constitution of 1776 put it this way:

> *"That the people have a right to hold themselves, their houses, papers, and possessions free from*

search and seizure, ***and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places****, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted"* (emphasis added).

Clearly, a summons of the sort involved in this case, without any evidenced cause or waiver behind it, is precisely what is prohibited by the Fourth Amendment.

Further still, and perhaps more to the immediate point, the statute providing for the lawful application of the IRS summons authority plainly sets limits as to those about whom such summonses can issue, without which that authority would clearly be out of harmony with the Amendment.

These simple, straightforward legal realities are not overcome by any mere declaration, even one claiming that *if* what is hoped to be found among the larger body of records the declarant wishes to search through *actually exists*, it is not already in the possession of the seeker; the declarant's saintliness; a noble purpose; or anything else. At minimum, a demonstrated cause of a probative nature must exist in the record. THIS is the very least standard by which the "properness of purpose" of a summons must be measured, or else the Fourth Amendment means nothing. (A summons issuing without such cause also makes meaningless the language of 26 USC 7605(b):

(b) Restrictions on examination of taxpayer

No taxpayer shall be subjected to unnecessary examination or investigations,...)

There are two possible circumstances in which the Fourth Amendment would not apply, relevant to this summons. One would be if I had claimed deductions on my sworn tax returns, based on something for which related records might exist (and which had a material effect on my tax liability). Were this so, the matter would not be a Fourth Amendment search at all; the burdens of proof would shift to me; and, in any event, "cause" for the presumptive existence of the records would be established. **However, no such deductions were claimed, and the IRS has made no allegation to the contrary**.

The other exception would be if I had relevantly waived my Fourth Amendment rights, by virtue of certain kinds of connections with the federal government, or otherwise. **I have not waived those rights, and the IRS has made no allegation to the contrary**.

It is in light of the foregoing legal realities that Congress has properly and unambiguously confined the summons authority by the statutory provisions laid out in complete detail in my petition to quash and my discussion above. Any effort to apply that authority otherwise, such as to reach "any person" without probable cause, waiver (by federal connection or otherwise), or in regard to a deduction claim, would be unconstitutional on its face. Not only would such authority represent a gross and unwarranted violation of privacy, but its sole application could only be a criminal investigation-- there would be no legitimate "administrative" or accounting purpose.

Absent challengeable deductions, the executive is explicitly commanded by statute to accept annual tax returns as filed:

> *"Provided, that any party, in his or her own behalf,... ...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the commissioner of Internal Revenue,... ...the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid,* ***and the same so declared shall be received as the sum upon which duties are to be assessed and collected."*** – Section 93 Revenue Act of 1862 (Emphasis added.)

This statutory provision finds expression and support in the provisions of section 3173 of the Revised Statutes laid out in my petition and briefs, as well as elsewhere throughout the overall body of internal revenue law. Some pertinent examples of this can be seen in current "code" reflections of the law, such as:

> *26 USC § 6201*
> *(a) Authority of Secretary*
> *The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes... ... Such authority shall extend to and include the following:*
> *(1) Taxes shown on return*
> *The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title,*
>
> *26 CFR 301.6203-1 Method of assessment*

...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown...,

and:

Sec. 6020. - Returns prepared for or executed by Secretary

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

with the limits of the latter 6020(b) authority-- the sole authority in regard to which any kind of "administrative" investigation is relevant-- clarified by the following portion of the Internal Revenue Manual:

5.1.11.6.8 (03-01-2007)

IRC 6020(b) Authority

1. The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):

(The list that follows includes **only** Forms 940, 941, 943, 944, 720, 2290, CT-1 and 1065).

Annual return forms are not on this list, because the authority of the Secretary to prepare or administratively manhandle returns upon which the assessment of taxes can be based DOES NOT EXTEND TO THOSE WHO ARE NOT "*required to deliver a monthly or other return of objects subject to tax*". Thus, these expressions of the law PRECISELY

REFLECT AND HARMONIZE WITH the specifications of section 93 of the Revenue Act of 1862 quoted above, and those of the summons authority of R.S. 3173 as amended in 1919 and re-enacted as the current law in the revenue act of 1926 (and clearly reiterated in sec. 3615 of the IRC of 1939, as extensively discussed in my briefs to this Court) which I have invoked:

> *"... And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person...";*

(By the same token, it is clear that if read literally as desired by the IRS, the language of 7602(a) DOES NOT HARMONIZE with these extensive expressions of the law.)

Consequently, the ONLY actual purpose for which the executive could seek to snuffle through papers and effects related to annual filings is in hopes of discovering evidence to support a perjury prosecution, that being the one mechanism provided in law for incentivizing accuracy and honesty in the execution of such returns. The executive cannot bypass the proscriptions and prescriptions of the Fourth Amendment by asserting that its interest is

merely an "administrative" interest in the content of returns over which it actually has no "administrative" latitude; nor can it credibly maintain that its purpose is not the pursuit of a criminal charge when a criminal charge is the only actual interest it could have in the matter. The fact that no Justice Department referral has (yet) been made prior to conducting a warrantless search (by the "Criminal Investigation" division of the IRS, no less) would clearly be irrelevant in such a case, and underscores the fact that the loose criteria for the propriety of a summons comprising the "Powell" doctrine applies ONLY in regard to those in the specialized class of filers of *"monthly or other return of objects subject to tax"* or those who have left unanswered the allegations underlying notification of a requirement to file.

Thus, the Fourth Amendment to the United States Constitution, which was explicitly invoked both in my petition to the District Court and my briefs to the appellate court, is unmistakably implicated in this case, and unmistakably stands against the validity of the summons involved. **I have never waived any of my rights, and I insist that they be respected.**

Neither the IRS in this case nor the Court below have suggested that I have waived my rights (despite the IRS incessantly, gratuitously, and with no supporting evidence referring to me as "taxpayer" throughout its brief...). Nor have either introduced into the record of these proceedings any evidence of any contractual nexus between the government and me, or any other pretext for suggesting that this matter is somehow outside the ambit of the Constitution. In fact, there is no such nexus or other colorable pretext, as is made clear by way of the

affidavit filed with my initial petition to the District Court, and as is re-iterated now; nor is any such nexus or pretext to be presumed, both as a plain matter of due process, and per Rule 301 of the Federal Rules of Evidence.

In light of all of the foregoing, it is obvious that the summons authority simply cannot extend to "any person", as the IRS and the Court below would have it, without being inherently unconstitutional. The summons authority can only encompass certain persons, and under certain circumstances, if it is to remain lawful-- and in fact, it does, as I have made clear in my petition to the district court and my briefs to the Sixth Circuit Court.

The IRS has vainly struggled to evade this point by suggesting a distinction between "third-party" records and "first-party" records. This is nothing but an effort at misdirection however, for 7602 is purported to reflect authority relating to BOTH VARIETIES-- it is the language of 7602 that the IRS relies upon to conduct FIRST-PARTY fishing expeditions, as well as the third-party variety, using the same idiotic "any person" argument the IRS offers in this case. If the words "any person" in 7602 can't literally mean "any person" in regard to a first-party summons (and they obviously cannot), the same words can't literally mean "any person" in regard to ANY summons.

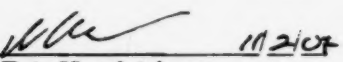
The summons in this case, and the IRS's arguments, explicitly invoke the law reflected at 7602, and no other. If the IRS wished to assert that it needs no authorization to scrutinize third-party records, or has such authorization from another statute, I suppose it could have attempted that argument. **But it did not.**

CONCLUSION

The ruling issued in this case is the consequence of a deliberate fraud perpetrated on the Court below, is squarely in conflict with multiple explicit rulings by this Honorable Court, the Fourth Circuit Court, acts of Congress and the Fourth Amendment; and is poisonously corrosive of the rule of law. Further, the contention this ruling embraces is disharmonious with the body of related internal revenue law; is entirely and plainly contradicted by the language of the relevant statutes-at-large acknowledged by even the IRS in this case to have stood undisturbed as the law on this subject for more than nine decades before the pretext on which this contention hangs appeared on the scene; and represents an effort to secure the cooperation of the judicial branch in the exercise of a power which is inherently arbitrary and capricious.

Petition for Writ of Certiorari should be granted.

Respectfully submitted



Peter Eric Hendrickson
Proceeding on his own behalf
232 Oriole Rd.
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APPENDIX

Decisions of the Courts below:

Order of the District Court

ORDER DENYING MOTION TO QUASH SUBPOENA

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on June 2. 2006

PRESENT: Honorable Gerald E. Rosen United States District Judge

This matter is presently before the Court on the "Petition to Quash Summons" filed by Petitioner Peter E. Hendrickson in which Hendrickson seeks to quash a Summons issued by the Internal Revenue Service (the "IRS") directing LaSalle National Bank ("LaSalle") to produce for examination records for the period January 1, 2000 through December 31, 2004 relating to Hendrickson and/or Lost Horizons Corp., a company owned by Hendrickson.[1] The stated purpose of the Summons is for a criminal investigation concerning "the tax liability or the collection of a tax liability or for a purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above [Peter E. Hendrickson] for the period shown [January 1, 2000 through December 31, 2004]."

Having reviewed and considered Hendrickson's Petition and the attachments thereto, the Court finds that Petitioner has failed to establish any legally cognizable grounds for the relief requested.

Therefore,

IT IS HEREBY ORDERED that Peter E. Hendrickson's Petition to Quash Summons is DENIED.

[1] It is unclear whether the LaSalle records sought relate only to one or both of these two parties as Petitioner did not provide the Court with the list of requested records which was apparently attached to the Summons. (Hendrickson attached to his Petition a copy of the Summons which states with regard to the requested records that it relates to "the person identified above," i.e., Peter E. Hendrickson, but further references an attached list as it also states "See Attached." The attachment to the Summons was not provided to the Court.)

Sixth Circuit Order

ORDER Before: RYAN and GRIFFIN, Circuit Judges; HOOD, Chief District Judge.*

Peter E. Hendrickson appeals a district court judgment that denied his petition to quash an Internal Revenue Service summons. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On April 13, 2006, an IRS special agent issued pursuant to 26 U.S.C. § 7602 a third-party summons to the LaSalle Bank of Troy, Michigan, for documents relating to Hendrickson's tax liability. Hendrickson filed a timely petition to quash the summons pursuant to 26 U.S.C. § 7609. The district court denied the petition sua sponte as meritless, and Hendrickson filed a timely notice of appeal. On appeal, Hendrickson contends that he and his company, Lost Horizons, are not persons against whom Congress has authorized the IRS to issue summons, essentially because Congress has not

enacted 26 U.S.C. § 7602 into positive law and because § 7602 conflicts with its underlying legislation. The government responds that the district court properly denied Hendrickson's petition.

This court reviews for clear error a district court's denial of a petition to quash an IRS summons. *See Fortney v. United States,* 59 F.3d 117, 119 (9th Cir. 1995). Under the clearly erroneous standard of review, "this court must affirm the trial court unless we are left with the definite and firm conviction that a mistake has been committed." *Alexander v. Local 496, Laborers' Int'l Union ofN. Am., Ill* F.3d 394,402 (6th Cir. 1999). Here, the district court did not clearly err in denying Hendrickson's petition.

The IRS is authorized to examine any relevant documentation and summon any person in possession of any relevant information or documentation when conducting a tax investigation. 26 U.S.C. § 7602(a). The IRS may serve a summons upon a third-party record keeper such as a bank or other financial institution in order to obtain financial records or information regarding a person who is the subject of an investigation by the IRS. 26 U.S.C. § 7609(a). When the IRS serves a summons on a third-party record keeper, the person whose records are the subject of the summons is entitled to notice that the summons has been served. *Shisler v. United States,* 199 F.3d 848, 850 (6th Cir. 1999); *Clay v. United States,* 199 F.3d 876, 878 (6th Cir. 1999). A person who is notified that a summons has been issued to a third-party record keeper may contest the summons by filing a petition to quash the summons within twenty days of the date on which notice of the summons was "mailed by certified or registered mail to him by the IRS." *Shisler,* 199 F.3d at 850; *see also*

26 U.S.C. § 7609(b)(2)(A); *Clay*, 199 F.3d at 878. "The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine" a petition to quash a summons issued by the IRS to a third-party record keeper. 26 U.S.C. § 7609(h)(l); *Fortney*, 59 F.3d at 119; *Deal v. United States*, 759 F.2d 442,443-44 (5th Cir. 1985); *Masai* v. *United States*, 745 F.2d 985, 987-88 (5th Cir. 1984). After a petition is filed, the government ordinarily bears an initial burden of establishing that: (1) the investigation is legitimate; (2) the materials are relevant; (3) the information is not within its possession; and (4) required administrative procedures were followed. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964). However, Hendrickson' s petition was not premised on any of these factors, but rather was premised on a plainly meritless contention. Accordingly, the district court did not clearly err in rejecting Hendrickson's petition sua sponte.

First, at least one court of appeals has concluded that Hendrickson's contention that Congress has not enacted Title 26 of the United States Code into positive law is incorrect. *See Tax Analysts v. IRS*, 214 F.3d 179, 182 n.l (D.C. Cir. 2000); *see also Youngv. IRS*, 596 F. Supp. 141, 149 (N.C. Ind. 1984). Moreover, even assuming that the United States Code constitutes only prima facie evidence of the law because Congress has not enacted Title 26 into positive law, *see Schmitt v. City of Detroit*, 395 F.3d 327, 330 (6th Cir. 2005), the government correctly notes that the language of 26 U.S.C. § 7602 does not in fact differ from the Internal Revenue Code of 1954, § 7602, ch. 736, 68 A Stat.

3,901 -02, in which Congress first enacted § 7602, or from subsequent amendments to that section. Simply put, the language of 26 U.S.C. § 7602 is positive law either by enactment as such by Congress or by authority of the Statutes at Large. Hendrickson's contention that the Internal Revenue Code of 1954 did not replace or supercede prior statutory authority from which the legislation was derived is patently meritless. Even assuming prior authority was not superceded, Congress has plainly enacted into positive law the authority to issue the IRS summons in this case. Accordingly, Hendrickson's petition is meritless, and the district court did not plainly err.

For the foregoing reasons, the district court's judgment is affirmed. See Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Sixth Circuit En Banc Denial

No. 06-1870

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AUG 0 8 2007

LEONARD GREEN, Clerk

PETER E. HENDRICKSON,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

BEFORE: RYAN and GRIFFIN, Circuit Judges; and HOOD, District Judge.

The court having received a petition for rehearing en bane, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en bane, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

1 USC 204

"In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."

26 USC 7602

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

26 USC 7605

(b) Restrictions on examination of taxpayer

No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the

taxpayer in writing that an additional inspection is necessary.

Preface to the Internal Revenue Code of 1939

"The internal revenue title, which comprises all of the Code except the preliminary sections relating to its enactment, is intended to contain all the United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes the occasion of which may arise after the enactment of the Code. These statutes are codified without substantive change and with only such change of form as is required by arrangement and consolidation. The title contains no provision, except for effective date, not derived from a law approved prior to January 3, 1939.

The derivation of the title, in its textual sequence, is shown in the appendix, part I, table A. Conversely, the placement of the statutes in the title, cited in their chronological order, is shown in table B. ***The Revised Statutes of the United States and the Statutes at Large of the United States are the sources of the law codified.*** *The Revised Statutes cover the period ended December 1, 1873. The Statutes at Large codified cover the period following December 1, 1873, and are published in the 35 volumes numbered 18 to 52, inclusive. The separate enactments carried into the internal revenue title, wholly or in part, from the Statutes at Large are 143 in number, exclusive of 93 statutes involving express amendment, reenactment, or repeal. The 277 Revised Statutes sections codified were derived from 21 basic statutes. The whole body of internal revenue law in effect on January 2, 1939,*

therefore, has its ultimate origin in 164 separate enactments of Congress. The earliest of these was approved July 1, 1862; the latest, June 16, 1938." (emphasis added)

Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000) *FN1. All editions of the United States Code since 1970 have actually read "any paper" instead of "any papers" as we set forth above. See 26 U.S.C. § 6104 (1970); see also United States Code editions of 1976, 1982, 1988, and 1994. However, the original language "any papers" was inserted into § 6104 in 1958, see Technical Amendments Act of 1958, Pub.L. No. 85-866, § 75(a), 72 Stat. 1606, 1660-61 (1958), and appeared in the 1958 and 1964 editions of the United States Code. The United States Statutes at Large are "legal evidence" of the law, 1 U.S.C. § 112 (1994), whereas the titles of the United States Code only serve as "prima facie" evidence of the law unless they are enacted as "positive law," in which case they too serve as legal evidence of the laws. 1 U.S.C. § 204(a) (1994); see also Stephan v. United States, 319 U.S. 423, 426, 63 S.Ct. 1135, 87 L.Ed. 1490 (1943) (per curiam) (Statutes at Large prevail over prima facie portions of U.S.C.). The I.R.C. has been enacted as a separate code and is therefore positive law. See Internal Revenue Code of 1954, ch. 736, 68A Stat. 1 (1954). Though both the Statutes at Large and I.R.C. could be said to be authoritative here, we use the "any papers" language of the original enactment appearing in the Statutes at Large. The difference is irrelevant to the outcome of the case, and we will thus disregard an apparent scrivener's error made by a codifier without congressional direction. Cf. United States v. Welden,*

377 U.S. 95, 98 n. 4, 84 S.Ct. 1082, 12 L.Ed.2d 152 (1964) (holding that a "change of arrangement" by a codifier to a section not enacted as positive law "should be given no weight").

IRM 5.1.11.6.8 (03-01-2007)

IRC 6020(b) Authority

1. The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):

A. Form 940, Employer's Annual Federal Unemployment Tax Return;

B. Form 941, Employer's Quarterly Federal Tax Return;

C. Form 943, Employer's Annual Tax Return for Agricultural Employees;

D. Form 944, Employer's Annual Federal Tax Return;

E. Form 720, Quarterly Federal Excise Tax Return;

F. Form 2290, Heavy Vehicle Use Tax Return;

G. Form CT-1, Employer's Annual Railroad Retirement Tax Return;

H. Form 1065, U.S. Return of Partnership Income.

Excerpt from the derivation tables of the Preliminary Materials of the IRC of 1986:

7602	*3614, 3615(a), (b), (c); 3632(a)(1)*
7603	*3615(d)*
7604(a)	*3633(a)*
7604(b)	*3615(e)*
7604(c)	
7605(a)	*3614, 3615*

Table A of the Appendix to the 1939 code- "Derivation of Internal Revenue Code" (relevant portion)

TABLE A.—*Derivation of Internal Revenue Code*—Continued

I. R. C. section	Date	Volume	Page	Chapter	Section
	1932, June 6	47	374	209	734 (c).
	*1932, June 16	48	325	90	913.
3461 (b)	*1935, June 28	49	431	813	
	*1937, June 29	50	338	652	
					Schedule A (3).
	1938, Feb. 25			37	
	1932, June 6	47	170	209	735.
3462	*1935, June 16	49	394	90	I.
	*1935, June 28	49	431	813	
	*1937, June 29	50	398	652	
	1938, Feb. 25	52	99	37	Title VIII.
3469	1932, June 6	47	374	209	734.
		47	375	209	735.
3490 (a)	1937, Sept. 1	50	913	898	402 (a).
3490 (b)	do	50	913	898	402 (d).
3491 (a)	do	50	913	898	402 (c).
3491 (b)	do	50	914	898	405 (a).
3491 (c)	do	50	914	898	405 (d).
3492	do	50	913	898	402 (b).
3493	do	50	914	898	404 (a).
3493 (a)	do	50	914	898	404 (c).
3493 (b)	do	50	914	898	404 (b).
3494 (a)	do	50	914	898	404 (b).
3494 (b)	do	50	914	898	404 (c).
3495	do	50	914	898	405 (b).
3496	do	50	914	898	405 (b).
3497	do	50	914	898	405 (c).
3498					
3500	1937, Sept. 1	50	913	898	402 (a).
3501	do	50	913	898	402 (b).
3504	do	50	914	898	405.
3507	do	50	913	898	401.
3508	do	50	913	898	113.
3520 (a) (1)	1937, Apr. 26	50	73	127	3 (a).
3520 (a) (2)	do	50	73	127	3 (c).
3520 (b) (1), (2)	do	50	73	127	3 (b).
3520 (b) (3)					
3521	1937, Apr. 26	50	73	127	3 (c).
3522	do	50	73	127	3 (a).
3523	do	50	73	127	3 (d).
3524	do	50	83	127	7.
3524	do	50	73	127	3 (f).
3525	do	50	90	127	17.
3526	do	50	90	127	19.
3527					
3528					
					R. S. 3172.
3600	*1934, Aug. 27	48	850	842	24.
	1938, Feb. 25	52	115	37	1110.
					R. S. 3122.
3601	*1879, Mar. 1	20	539	130	2.
					R. S. 3177.
					R. S. 3462.
	1926, May 29	39	254	252	19.
3602	*1921, Mar. 3	41	1250	214	
	1911, Mar. 1	36	1167	231	38.
3603	1938, Feb. 25	44	112	37	1103 (b).
3604	1926, May 29	43	275	289	603.
					R. S. 3172.
3611	1938, Feb. 25	44	109	37	1113.
					R. S. 3178.
3613 (a)–(c)	*1938, Feb. 25	44	113	37	1102.
					R. S. 3178.
3613 (d) (1)	*1938, Feb. 25	44	112	37	1102.
	1935, Aug. 30	49	1027	829	406.
3613 (d) (2)					R. S. 3178.
	*1938, Feb. 25	44	112	37	1102.
3613 (d) (3)					
3613 (e), (f)	*1938, Feb. 25	44	113	37	R. S. 3178. 1103.
3633					R. S. 3180.
3634 (a)	*1938, Feb. 25	44	113	37	1104.
	*1918, May 25	45	978	653	613.
3634 (b)	1934, May 10	48	757	277	507.
3643 (a)–(c)					R. S. 3172.
	1938, Feb. 25	44	110, 119	37	1116.

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Page 95 of the 1992 Congressional Joint Committee on Taxation Report "Derivation of Code Sections" (relevant portion)

Table II.—Sources of the 1954 Code—Continued

1954 Code section	Derived from 1939 Code section
7459(b)	1117(b).
7459(c)	1117(c).
7459(d)	1117(d).
7459(e)	1117(e).
7459(f)	1117(f).
7459(g)	
7460(a)	1118(a).
7460(b)	1118(b).
7461	1120.
7462	1121.
7463	
7471(a)	1130(a).
7471(b)	1130(b).
7471(c)	
7472	1131.
7473	1132.
7474	1133.
7481	1140.
7482(a)	1141(a).
7482(b)	1141(b).
7482(c)	1141(c).
7492	1149
7602	3614; 3615 (a), (b), (c); 3632(a)(1).
7603	3615(d).
7604(a)	3633(a).
7604(b)	3615(e).
7604(c)	
7605(a)	3614, 3615.
7605(b)	3631.
7606(a)	3601(a)(1).
7606(b)	3601(a)(2).
7606(c)	
7607	
7621	3650.
7622(a)	3632(a).
7622(b)	3632(b).
7623	3792.
7641	2302(c), 2322(c), 2352(c), 2569(d)(4), 2653(b).
7701 (a)—Con.	3238(a), 3507(a), 3797(a)(1).
7701(a)(2)	3797(a)(2).
7701(a)(3)	3797(a)(3).
7701(a)(4)	3797(a)(4).
7701(a)(5)	3797(a)(5).
7701(a)(6)	3797(a)(6).
7701(a)(7)	3797(a)(7).
7701(a)(8)	3797(a)(8).
7701(a)(9)	3797(a)(9).
7701(a)	

Affidavits filed with the Petition to Quash filed with the District Court

AFFIDAVIT

State of Michigan

County of Oakland

Before the undersigned, an officer duly commissioned by the laws of Michigan, on this 24th day of April, 2006, personally appeared Peter E. Hendrickson who, having been first duly sworn, deposes and says:

I am of competent age and mind.

I am a private-sector, non-federally-connected individual.

I have never refused or neglected to render any federal-tax-related list or return within the time required upon being notified or required to do so.

I am not, and never have been, required to deliver a monthly or other return of objects subject to tax.

I am not, and never have been, engaged in the administration or enforcement of any internal revenue laws.

Witness: Tessa C. DeSimone

Affiant Peter E. Hendrickson

Sworn and subscribed before me this 25th day of April, A.D. 2006

KENNETH F. ROTHOFF
NOTARY PUBLIC, STATE OF MI
COUNTY OF LIVINGSTON
MY COMMISSION EXPIRES Mar 4, 2011
ACTING IN COUNTY OF Oakland

AFFIDAVIT

State of Michigan

County of Oakland

Before the undersigned, an officer duly commissioned by the laws of Michigan, on this 24th day of April, 2006, personally appeared Peter E. Hendrickson who; having been first duly sworn, deposes and says:

I am of competent age and mind, and am the sole stockholder and officer of Lost Horizons Corp.

Lost Horizons Corp is a private-sector, non-federally-connected entity.

Lost Horizons Corp has never refused or neglected to render any federal-tax-related list or return within the time required upon being notified or required to do so.

Lost Horizons Corp is not, and never has been, required to deliver a monthly or other return of objects subject to tax.

Lost Horizons Corp is not, and never has been, engaged in the administration or enforcement of any internal revenue laws.

Witness: _____ Affiant: Peter E. Hendrickson

Sworn and subscribed before me this 25th day of April, A.D. 2006

_____

_____

KENNETH F. ROTHAFT
NOTARY PUBLIC, STATE OF MI
COUNTY OF LIVINGSTON
MY COMMISSION EXPIRES May 4, 2011
ACTING IN COUNTY OF OAKLAND

FILED
JAN 29 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

83

CASE NO. 07-624

IN THE SUPREME COURT OF THE UNITED STATES

Peter E. Hendrickson, Petitioner

v.

United States, Respondent

Petition for Re-Hearing Of This Court's Order Denying My Petition For Writ of Certiorari to the United States Court Of Appeals for the Sixth Circuit

Petitioner Peter E. Hendrickson
232 Oriole Road,
Commerce Twp., Michigan, 48382
248-366-6858
Proceeding Pro Se

QUESTIONS PRESENTED IN MY PETITION

1. Whether the Court of Appeals erred in holding that the language of the 1954 Internal Revenue Code constitutes an entire, substantive replacement of all United States internal revenue law enacted prior to August 16, 1954 (and particularly as regards the summons authority), and is now the free-standing, independently enacted, whole body of federal internal revenue law, general and permanent in nature;

2. If not, does the language of section 7602 of the 1954 IRC concerning IRS (or Treasury Department) summonses and examinations actually authorize searches through the papers, effects and records of, or about, any person whatsoever, without distinction of context, the person's relationship to the federal government (or lack thereof), whether a waiver of Fourth Amendment protection has or has not been made, the existence of evidentiary cause of any kind (or lack thereof), and in the face of unchallenged sworn evidence that, in fact, no cause exists, and that the target of the summons is not within the scope of its lawful authority.

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STATEMENT OF THE CASE

This case involves fundamental issues about the accurate scope and application of IRS summons authority never before litigated, yet critical to the proper deployment of that frequently-invoked, high-potential-for-abuse authority, and is of profound interest to the American people as a whole. The ruling of the Court below regarding those issues is in direct conflict with repeated rulings by this Court and at least the Fourth Circuit Court of Appeals, and rests on a misrepresentation in appellate proceedings of a single completely inapposite-- indeed, contrary-- ruling in a DC Circuit case, cited but never quoted. Nonetheless, the ruling below is already being used by the IRS in representations to other courts in similar cases. Thus, this matter is of immediate and significant importance.

The Internal Revenue Service (IRS) has issued a summons in an effort to conduct a search concerning Petitioner (hereinafter referred to in the first person), citing no cause, no connection between me and the federal government, and no waiver or other mechanism by which the statutory and/or Constitutional limits of the summons authority have been rendered moot in regard to me. This is the fifth such summons attempted by the IRS over the past several years-- the first was withdrawn by the agency, and the next three were dismissed on the motions of the United States Department of Justice after being challenged in district courts.

Like the others, this latest summons was issued in the face of timely and proper sworn tax returns establishing-- without reliance on deductions-- that I owe no outstanding obligation to the Respondent

(hereinafter: IRS) or its client, which return affidavits stand entirely unchallenged throughout the proceedings in this case. As in the previous cases, no evidence supporting the summons has ever been introduced.

THE IRS HAS NEITHER PRESENTED NOR ARGUED ANY LEGALLY MEANINGFUL CAUSE WHATEVER FOR ITS SEARCH, NOR ANY EVIDENCE OR ARGUMENT AS TO HOW OR WHY I AM NOT ENTITLED TO THE PROTECTIONS SPECIFIED IN THE FOURTH AMENDEMENT TO THE UNITED STATES CONSTITUTION. NOR HAS THE IRS PRESENTED EVIDENCE OF ANY CONTRACT BY THE TERMS OF WHICH, OR IN CONNECTION WITH WHICH, IT OR ANYONE ELSE CAN CLAIM A RIGHT TO LOOK THROUGH MY PAPERS AND EFFECTS.

Similarly, no Court which has addressed this matter thus far has presented such cause, evidence or contract, or alleged their existence. By means of the affidavits presented with my petition to quash, I have clearly and unambiguously rebutted any and all presumptions that may otherwise have been relied upon in this regard, and, in any event, made clear that it is my purpose to do so even if my affidavits may have failed to explicitly address some hidden, inscrutable presumption being (corruptly) relied upon by the IRS or courts.

> *Federal Rules of Evidence Rule 301. Presumptions in General Civil Actions and Proceedings*
>
> *In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going*

forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

FURTHERMORE, IT IS CLEAR THAT A GOVERNMENT SEARCH OF OR FOR RECORDS RELATING TO "INCOME" CANNOT EXTEND TO RECORDS **NOT** RELATING TO "INCOME". My properly-filed sworn tax returns have indicated that no "income" was received during the years in regard to which the IRS wishes to search. NO EVIDENCE TO THE CONTRARY HAS BEEN PRESENTED. Thus, the IRS is clearly seeking to conduct a search of records entirely outside the scope of the government's lawful interest in every possible way. In short, the search the IRS wishes to conduct is illegal.

I responded to the summons with a timely petition to quash under the provisions represented at 26 USC 7609 and invoking the jurisdiction of the District Court as specified at 7609(h), citing the provisions of law explicitly specified in multiple rulings of this Honorable Court as being those in which the IRS summons authority resides, and furnishing the District Court with evidence (unchallenged to this day) that I am not among those about whom such summonses may issue, per the plain language of those provisions. The District Court issued a ruling against my petition without any appearance or filing by the IRS, without proceedings of any kind, and without explanation.

I appealed to the Sixth Circuit Court, again

presenting my affidavits and citing the language of the applicable law and the relevant declarations by the People in the United States Constitution, by multiple Congressional authorities, and by this Court in multiple, explicit rulings unambiguously declaring that the language of the 1939 IRC is properly reflective of the applicable law regarding the summons authority the IRS seeks to exercise in this case, and that the language of the 1954 IRC IS NOT properly representative of that authority. Nonetheless, after being fully briefed, the Sixth Circuit panel said,

"Nawww! The Supreme Court is wrong, Congress is wrong, EVERYBODY'S WRONG! Even though it said it didn't at the time, still says it didn't, and the Supreme Court has repeatedly studied the Congressional record and in no uncertain terms said it didn't (and the Constitution says it can't, even if it wanted to), in 1954 Congress:

- *Enacted a 3.4 million word statute and entirely repealed all previous related law:*

"...the government correctly notes that the language of 26 U.S.C. § 7602 does not in fact differ from the Internal Revenue Code of 1954, § 7602, ch. 736, 68 A Stat. 3,901 -02, in which Congress first enacted § 7602, or from subsequent amendments to that section. Simply put, the language of 26 U.S.C. § 7602 is positive law either by enactment as such by Congress or by authority of the Statutes at Large. Hendrickson's contention that the Internal Revenue Code of 1954 did not replace or supercede prior statutory authority from which the legislation was derived is patently meritless."

- *Threw the Fourth Amendment on the trash-heap and declared that the executive branch can conduct a search through the papers and effects of any entity, live or artificial (and if artificial whether a creature of Congress or of anyone else, even a foreign sovereign), without any cause other than mere curiosity, on the pretext of determining whether a tax return, if filed, was accurate, or whether one SHOULD have been filed, if one was not-- in other words, a pretext without any limitations whatever."*

(In this latter regard, the appellate court was careful to deploy the term "relevant" in describing what papers the government can poke through in exercising this authority: *"The IRS is authorized to examine any relevant documentation and summon any person in possession of any relevant information or documentation when conducting a tax investigation. 26 U.S.C. § 7602(a)."* Simultaneously, however, the court disregards this important consideration by refusing to restrain the government in pursuing its search through documentation the relevance of which HAS CLEARLY AND UNAMBIGUOUSLY BEEN REFUTED, AND WHICH THE GOVERNMENT HAS FAILED TO ESTABLISH. Indeed, the issue of relevance is the very essence of the statutory provisions reflected accurately in the 1939 IRC which the government seeks to evade in its arguments in the appellate court and which that court disregards by its erroneous ruling.)

SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED AS TO WHY MY PETITION SHOULD BE GRANTED

1. In denying my petition for writ of certiorari, this Court has thereby declared its own previous rulings as to the legal standing and significance of the language of section 7602 of the 1954 IRC to have been in error or no longer valid. However, the Court's previous rulings on this subject CANNOT have been in error or no longer be valid.

Those previous rulings were not matters of interpretation, but were simple observations and acknowledgements of expressly-stated and recorded Congressional intent. Congress declared the language of section 7602 of the 1954 code to represent no substantive change of the authority, scope or application of the summons power from that presented in the sections of the 1939 IRC from which the 1954 language is derived. This is an immutable fact, and is what has been accurately observed by this Court in its previous relevant rulings:

> *"Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code.* " United States v. LaSalle National Bank, 437 U.S. 298 (1978) (referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954)).
>
> *"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)..."* Donaldson v. United States, 400 U.S. 517 (1971);
>
> *"As we said in United States v. Ryder, 110 U.S. 729, 740 (1884): "It will not be inferred that the*

legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." (Citations omitted). Fulman v. United States, 434 U.S. 528 (1978);

"...absent [substantive] comment it is generally held that a change during codification is not intended to alter the statute's scope. See Muniz v. Hoffman, 422 U.S. 454, 467-474 (1975)." Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985);

"Under established canons of statutory construction, "it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." Anderson v. Pacific Coast S.S. Co., 225 U. S. 187, 199 (1912); see United States v. Ryder, 110 U. S. 729, 740 (1884)." Finley v. United States, 490 U.S. 545, 554 (1989).

To rule, or let stand a ruling, to the contrary is incoherent (and irreconcilable with undisputed facts).

THUS, THIS COURT'S DENIAL OF MY PETITION CONSTITUTES AN IRRECONCILABLE CONFLICT WITH ITS OWN PREVIOUS RULINGS.

2. There is a public need for clarity and forthrightness about the fundamental issue involved in this case. That issue can be summarized as follows: Since merely stating a reason for wanting to conduct a search is not sufficient; and no law, rule, or decree of Congress, the Executive, or any other entity-- no matter when made, or what its wording, short of a

Constitutional amendment-- is sufficient; on what basis, and by what authority, mechanism or presumption is the government seeking to conduct a search in disregard of the provisions of the Fourth Amendment, and being allowed to do so by the Courts?

Not only has the government no more inherent right to seek and examine my papers in satisfaction of its speculations or curiosity than I have to command the release of, and look through, records concerning my neighbor, but the Fourth Amendment to the United States Constitution specifically prohibits any governmental effort to do these things. No legal nuance is relevant-- THE GOVERNMENT IS PROHIBITED FROM SEEKING THE RECORDS IN THE ABSENCE OF PROBABLE CAUSE, SWORN TESTIMONY AS TO SAME, AND A WARRANT.

Something apparently is being relied upon by the government and the Courts in the instant case and the tens of thousands of other such searches carried on over the years to escape this prohibition, and it is the Constitutional responsibility of this Honorable Court to plainly and precisely declare what that "something" is so that targets of these summonses can address it fairly and squarely. The status of the 1954 IRC is immaterial to this question, since there simply is nothing that Congress could have done or said in any enactment or combination of enactments which can lawfully evade or diminish the specifications of the Fourth Amendment. As this Court has properly observed:

> *"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."* Miranda v. Arizona, 384 U.S. 436 (1966)

The statutory particulars of the summons authority reflected in the 1939 IRC do offer a selection of "somethings" which presuppose relations between the target of a summons and the United States in which the provisions of the Fourth Amendment would not apply. But the lower courts are claiming in this case that those provisions are irrelevant, and this Court's denial of my Petition says the same. We are thus left to presume a "something else" which is undeclared by the United States in litigating these cases and unsought by the courts-- a plain abrogation of judicial responsibility in which a litigant's declared "right to act" is being upheld by the courts without any demonstration of a basis for that right despite the existence of such a basis having been disputed by the other side in the contest. Or we are left to presume simple lawlessness by both the United States and the courts.

Tens of thousands of Americans are watching this particular case right now, and over the course of time millions will be intimately familiar with it. All Americans have a profound interest in this question, which bears directly on the fundamental nature of the relationship between Citizen and government in America. That relationship cannot tolerate the operation of legal mysteries by means of which the government accomplishes means or ends which it might find desirable but which are, on their face, not permitted to it. Thus, the granting of my Petition is a matter of immediate and considerable public interest.

3. I have presented overwhelming evidence in my petition that the 1954 IRC is NOT a replacement for all previous law relevant to the instant case or

otherwise. However, if the 1954 code WERE the law, this would mean that Congress has thereby removed natural persons from the ambit of much, if not all, of the internal revenue law.

The actual statutes-at-large include "natural person" in the legal definition of "person" to be used in the law:

> *"And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person", as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person."* Revised Statutes of 1873, §3140.

The IRC of 1954, however, omitted natural person from the definition of the term that it presents, substituting "individual", "trust" and "estate":

> *(1) Person*
> *The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.* IRC of 1954, 1986 (26 USC), §7701(a)(1).

Since "individual" does not necessarily mean "natural person":

> *"As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include*

> *artificial persons.*" Black's Dictionary of Law, (2nd edition),

and since Congress must be taken to have made the change deliberately:

> "'*[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.*'" Russello v. United States, 464 US 16, (1983),

under the doctrine that the 1954 code is itself the law, it must be presumed that natural persons are no longer included when the term "person" is used therein.

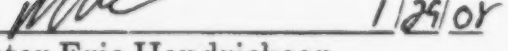
I am, in fact, a natural human being. Thus, if the contention that the IRC of 1954 is now the law is allowed to stand (and without regard to any other consideration), I am not within the class of "any person", either for purpose of the summons authority or any other provision of internal revenue legislation! Consequently, the lower courts should have quashed the summons involved in this matter on that basis alone (and by virtue of a doctrine which the denial of my Petition will affirm and which all of America will find to be of intense interest...)

CONCLUSION

The denial of my Petition creates an irrevocable conflict between rulings of this Court, and in a matter not even of mere interpretation, but as to recorded facts previously observed and acknowledged by this Court. The denial is of intense public interest, as it is supportive of an inherently arbitrary and capricious behavior by the United States in an effort to evade either restrictive provisions of the United States Constitution or fundamental principles of due process and equity, or both. The denial of my Petition flies in the face of long-established canons of statutory construction, while supporting a legal conclusion which either eviscerates the majority of internal revenue law as administered for the last 54 years or will lead to extensive litigation in that regard, and which itself invalidates the summons at issue in this case.

The order denying my Petition for Writ of Certiorari should be re-heard and the Petition should be granted.

Respectfully submitted



1/29/07

Peter Eric Hendrickson
Proceeding on his own behalf
232 Oriole Rd.
Commerce Twp, Michigan 48382
(248) 366-6858

CERTIFICATE OF GOOD FAITH AND COMPLIANCE WITH RULE 44.2

I hereby certify that this Petition for Re-Hearing is presented in good faith and not for delay, and is restricted to the grounds specified in Rule 44.2.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of January, 2008.

Peter Eric Hendrickson
Proceeding Pro Se
232 Oriole Rd.
Commerce Twp., Michigan 48382
248-366-6858

CERTIFICATE OF GOOD FAITH

I hereby certify that the Petition for Re-Hearing to which this certificate is attached pursuant to Rule 44.1 is presented in good faith and not for delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of January, 2008.

Peter Eric Hendrickson
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